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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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ILLINOIS COMMERCE COMMISSION	)	
	)	
On Its Own Motion	)	
	)	
v.	)	No. 07-0166
	)	
COMMONWEALTH EDISON COMPANY	)	
	)	
Investigation of Rate Design Pursuant to	)	
Section 9-250 of the Public Utilities Act	)	

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**BRIEF ON EXCEPTIONS  
OF  
THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO**

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**ORAL ARGUMENT REQUESTED**

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Now comes The Building Owners and Managers Association of Chicago (“BOMA”), by and through its attorneys, the Law Office of Michael A. Munson, and hereby files its brief on exceptions in the within proceeding pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the “Commission”) and submits its proposed revisions to the proposed order (the “Proposed Order”) issued by the Administrative Law Judge on July 31, 2007. Pursuant to Section 200.850 of the Rules of Practice of the Commission, BOMA states that the issues herein presented may be further clarified and resolved by oral argument and accordingly requests oral argument.

## **I. INTRODUCTION**

The Commission initiated the within proceeding for the salutary purpose of investigating ComEd’s post-2006 rate designs, with the view toward ordering any changes in rate designs necessary to make ComEd’s rate structure more just and reasonable. (Initiating Order at pg. 3). Unfortunately, while the Commission professes sympathy for the significant rate increases experienced by nonresidential customers in the transition to the current rate designs, the Proposed Order does not provide any mitigation or fails to fully recognize the exceptional rate shock experienced by the nonresidential electric space heating customers, nor does the Proposed Order provide any substantial basis for excluding the nonresidential space heating customers from any rate relief measures, such as Rider CABA, provided to other customer classes.

The nonresidential space heating customers continue to face the largest rate increases of any customer class which has provided estimates in this proceeding, and continue to be the only customer class which has not been afforded meaningful rate relief. To exacerbate such inequity, the recently enacted Senate Bill 1592, with amendments thereto, affords almost no rate relief to

the nonresidential customers despite providing a \$1 billion package of rate relief to other customers.

BOMA has asserted that the ComEd's discontinuance of Rider 25 service, which exempted nonresidential and other space heating customers from demand charges during non-summer months, was effected in contravention of Section 16-103(a) of the Act and that such discontinuance is unlawful. (BOMA Initial Brief at pp. 10-15). Even if ComEd had properly sought to eliminate Rider 25 service, such elimination is not justified on the basis of cost studies provided by ComEd. (BOMA Reply Brief at pg. 6). In contrast, to induce building owners to utilize electric space heating, for over three decades ComEd provided cost bases to justify the initiation and maintenance of the same so-called "free delivery services," it now argues should be discontinued. This implied contract between ComEd and the users of electric space heating within "all electric" buildings was honored by ComEd, and supported by the Commission, until unilaterally terminated by ComEd. The nonresidential space heating customers, who cannot now convert to other fuel sources except at prohibitive cost, are left with no recognition of this impact and no reasonable solution to their astronomical electric bills except to try to find alternative supply in the competitive market. Other than referring to unspecified public policy considerations (Proposed Order at pg. 27), the Proposed Order fails to meaningfully address any of BOMA's rate shock issues, and makes no significant findings of fact on the legal issues concerning ComEd's abandonment of a distinct and identifiable electric space heat rate that is provided in form to residential customers, but not to nonresidential customers.

The continuation of Rider 25 service, which has been offered as a separate and distinct service for three decades, is consistent with ComEd's historical rate structure and with sound rate design principles. (BOMA Initial Brief at pg. 15-16). Most fundamentally, the continuation of

separate rate treatment for space heating customers pursuant to Rider 25 is necessary to prevent the unjust and unreasonable rate shock experienced by these customers. For these reasons, BOMA must take exception to the Proposed Order's rejection of BOMA's request to reinstate and require the continuation of Rider 25 service as same was provided prior to its elimination.

BOMA has further asserted that the exclusion of the nonresidential space heating customers from rate relief under Rider CABA is contrary to the mandates of Sections 9-241 and 9-252 of the Act and, accordingly, BOMA must take exception to the Proposed Order's rejection of BOMA's request to make Rider CABA applicable to the nonresidential space heating customers.

Finally, BOMA takes exception to the Proposed Order's rejection of BOMA's request to order ComEd to reduce electricity demand charges for nonresident electric space heating customers in the 400-1000 KW, 1,000-10,000 KW and 10,000 KW + delivery service classes by an amount equal to the average percentage of non-summer demand from electric space heating customers in each customer class, as was done for over three decades.

**II. EXCEPTION 1: The Proposed Order Errs as a Matter of Law by Failing to Conclude that: (a) Section 16-103(a) of the Act Requires ComEd to Continue to Offer Rider 25 Service to Retail Customers; (b) ComEd's Elimination of Differential Rate Treatment for Nonresidential Space Heating Customers Was Not Just or Reasonable and was not Justified by any Cost Basis Provided by ComEd, or (c) ComEd's Elimination of Differential Rate Treatment for Nonresidential Space Heating Customers is Inconsistent with Historical Rate Structure and with Good Ratemaking Principles**

Contrary to the conclusions set forth in the Proposed Order that Rider 25 is a mere "pricing discount," and not a utility service which can only be abandoned in accordance with statute (Proposed Order at 27), Rider 25 is inarguably a separate and distinct tariffed service within the meaning of Section 16-103(a) of the Act (BOMA Initial Brief at pp. 12-13). The

Commission has not declared Rider 25 service competitive (BOMA Initial Brief at pg. 12), and ComEd has not petitioned for or sought the right to abandon the service under Section 8-508 of the Act (BOMA Initial Brief at pp. 13-14). As a result, ComEd's elimination of Rider 25 service was not effected in compliance with Section 16-103(a) of the Act and is unlawful. Even if ComEd had properly sought to abandon such service in accordance with Section 8-508 of the Act, ComEd has not met its burden of justifying such abandonment on the basis of cost. Accordingly, pursuant to the mandates of Section 9-250 of the Act the Commission should reverse its approval of such elimination and order the continuation of Rider 25 service.

The conclusions set forth in the Proposed Order do not refute BOMA's core contentions that the nonresidential space heating customers have been subjected to astronomical rate shock, which rate shock is not mitigated by the rate relief programs provided to other customer classes. (See Prop.Order at pp. 26-27). Rather, the Proposed Order erroneously concludes that as stated in its Docket No. 05-0597, there are insufficient public policy considerations to warrant deviating from cost-based delivery demand rates and that the nonresidential space heating customers may be able to find their needs met through alternative suppliers. (Id.). Such conclusions are not supported by the record in this proceeding. Furthermore, the approval of Rider CABA provides just such a scenario where the Commission has deemed the existence of deviations from cost based rates appropriate in order to mitigate customer impacts. (See Rider CABA; ICC Docket No. 07-0825).

BOMA urges that the public policy of obtaining electric supply and delivery at reasonable cost is overarching; there is no assertion in the record that the 88% increase experienced by the nonresidential space heating customers is just and reasonable within the purview of the Act. These increases were validated by ComEd's own Exhibits 2.2 and 2.3.

BOMA further asserted, and no party refuted, that given the uncertainties of the competitive market, there is absolutely no assurance that the non-electric space heating customers will be assured of obtaining electricity from alternative suppliers at current prices. (BOMA Reply Brief pg. 5). Moreover, it is ComEd's rates, and not the alternative suppliers', which are the subject of this proceeding, and it is ComEd's rates which must be just and reasonable. (220 ILCS 5/9-101). The Commission cannot, as the Proposed Order purports to do, approve unlawful, unjust or unreasonable rates.

Statutory mandates aside, BOMA and others have argued that the rate shock experienced by the nonresidential space heating customers following the elimination of Rider 25 is indicative of improper rate design and that the use, as in the present case, of allocated cost of service studies for the purpose of determining prices is inconsistent with good ratemaking principles. (BOMA Initial Brief at pp. 15-16; CUB Ex. 1.0 at pg. 6 ll. 121-134). The continuation of Rider 25 service, which has been in existence for 30 years, properly reflects the Commission's stated goal of considering historical rate structures (Initiating Order at pg. 4); it is that the elimination of such service improperly departs from traditional ratemaking. (BOMA Reply Brief at pg. 11). BOMA has argued that proper rate design should consider public acceptability and feasibility of application; clearly rate impacts of the magnitude experienced by the former Rider 25 customers cannot be considered publicly acceptable. (BOMA Initial Brief at pp. 15-16).

Accordingly, BOMA respectfully requests that in lieu of the third, fourth and fifth grammatical paragraphs of Subsection F of Section IV of the Proposed Order (entitled "Commission Analysis and Conclusions") at pages 26-27, the Commission adopt the following language:

The Commission has reviewed the evidence and arguments of the parties, which are summarized above. The Commission concludes that (a) Rider 25 service is a

separate and distinct tariffed service which has not been declared competitive by the Commission, (b) Rider 25 service has not been abandoned pursuant to Section 8-508 of the Act, and (c) the elimination by ComEd of such service by ComEd is unlawful and must be reversed in these proceedings. Even if ComEd had sought to abandon Rider 25 service pursuant to Section 8-508 of the Act, ComEd has not provided any cost basis to justify the elimination of such service. The Commission further concludes that the rate mitigation features provided by ComEd to other customer classes do not mitigate the massive rate shock experienced by the nonresidential space heating customers as a result of the elimination of Rider 25, and, in view of the uncertainties incident to the competitive market, there is no assurance that such customers will be able to obtain electric supply at reasonable rates from alternative suppliers. In any event, it is the lawfulness, justness and reasonableness of ComEd's rates and charges which are before this Commission, and we conclude that the rates and charges payable by the nonresidential space heating customers are not lawful, just or reasonable.

The Commission concludes that ComEd should reinstate Rider 25 service as the same was provided prior to its elimination in Docket No. 05-0597 and that the nonresidential space heating customers should be exempted from non-summer month demand charges (i.e. distribution facilities charges) on electricity used for space heating customers.

The Commission is of the further opinion and concludes that, additionally or alternatively, ComEd should reduce electricity demand charges for nonresident electric space heating customers in the 400-1000 kw, 1,000-10,000kw and 10,000kw + delivery service classes by an amount equal to the average percentage of non-summer demand from electric space heating customers in each customer class.

### **III. EXCEPTION 2: The Proposed Order is Errs by Failing to Conclude that Rate Relief was not Provided to all Impacted Customers as Required by Section 9-241 of the Act**

Although various parties have posited that the availability of the Lazare Rate Mitigation Plan or other mitigation features somehow negate BOMA's rate shock concerns (CNE Reply Brief at pg. 5; Comed Ex 1.0 at pg.14 ll. 214-215), in fact there are absolutely no such mitigation measures or features applicable to nonresidential space heating customers with peak monthly loads greater than 400mw. (BOMA Direct Panel Testimony at pg. 10 ll. 203-205). The exclusion of the nonresidential space heating customers from rate relief measure applicable to

other customer classes is not supported by the record, and the Proposed Order makes no findings that justify such exclusion. Additionally, BOMA has asserted that although Rider 25 applied to both residential and nonresidential space heating customers, only residential space heating customers have been afforded rate relief (i.e. pursuant to Docket No. 07-0285). (BOMA Reply Brief at 14). The failure to provide rate relief to the nonresidential space heating customers while providing such relief to other customer classes violates the provisions of Section 9-241 of the Act.

BOMA has argued that there is no just reason to exclude BOMA from eligibility under Rider CABA or to provide more favorable rate treatment for the condominium customer class, whose post-2006 rate shock is materially reduced under Rider CABA. (BOMA Initial Brief at pg. 9). Unlike BOMA's constituents, the condominium customers eligible to take service under Rider CABA were not required to submit quotes from alternative suppliers in order to receive meaningful rate relief. (BOMA Reply Brief at pp. 8-9).

To assure that ComEd's rate design does not violate the provisions of Section 9-241 and 9-252 of the Act, BOMA has proposed that in addition or as an alternative to the reinstatement of Rider 25 service the Commission order ComEd to make all nonresidential customers, including the nonresidential space heating customers, eligible to take service under Rider CABA. (BOMA Initial Brief at pg. 17).

Accordingly, BOMA respectfully requests that in addition to the language proposed at Exception 1 above, the Commission add and adopt the following language as the sixth grammatical paragraph of Subsection F of Section IV at page 27 of the Proposed Order (entitled "Commission Analysis and Conclusions"):

The Commission concludes that ComEd has provided no cost basis or other justification for excluding the nonresidential space heating customers from

eligibility under Rider CABA, and that such exclusion contravenes the provisions of Section 9-241 and 9-250 of the Act. Accordingly, the Commission further concludes that ComEd should provide nonresidential space heating customers with the same rate relief as is provided other eligible customers under Rider CABA.

#### **IV. EXCEPTION 3: The Findings and Ordering Paragraphs of the Proposed Order Must Be Revised to Conform to the Exceptions Taken by BOMA**

To conform the Findings and Ordering Paragraphs of the Proposed Order to the Exceptions hereinabove set forth, BOMA respectfully requests that the Commission adopt and the following language be added to Section VIII (following enumerated paragraphs (1)-(6) at page 38 of the Proposed Order (entitled “Findings and Ordering Paragraphs”):

(7) ComEd’s elimination of separate rate treatment for nonresidential space heating customers incident to the discontinuation of Rider 25 service has caused massive rate shock for such customers, which rate shock has not been mitigated by rate relief measures provided to other customer classes;

(8) ComEd has not provided any cost justification for the elimination of separate rate treatment of separate rate treatment for nonresidential space heating customers;

(9) ComEd has unlawfully discontinued Rider 25 service in contravention of the Section 16-103(a) of the Act;

(10) ComEd has not provided any cost or other justification for excluding the nonresidential space heating customers from eligibility under rider CABA;

(11) ComEd must reinstate and continue to provide Rider 25 service as the same was provided prior to its elimination in Docket No. 05-0597 and that the nonresidential space heating customers should be exempted from non-summer month demand charges (i.e. distribution facilities charges) on electricity used for space heating customers;

(12) ComEd must reduce electricity demand charges for nonresident electric space heating customers in the 400-1000 kw, 1,000-10,000kw and 10,000kw + delivery service classes by an amount equal to the average percentage of non-summer demand from electric space heating customers in each customer class; and

(13) ComEd must revise Rider CABA so as to make the nonresidential space heating customers eligible for service thereunder so as to provide the same rate relief to such customer as is provided to other eligible customers under Rider CABA.

## V. CONCLUSION

BOMA/Chicago appreciates Staff's recognition that BOMA/Chicago has the opportunity in ComEd's next rate case to present more analysis on the issues it raised in this proceeding. (ICC Staff Ex. 1.0 p. 9). However, until that time, this case presents a salient opportunity to correct inequities in ComEd's rate design. Undeniably, non-residential space heating customers are experiencing massive rate shock arising from the elimination of Rider 25, and BOMA entreats the Commission to provide some reasonable rate relief in the subject proceedings.

Respectfully submitted,

THE BUILDING OWNERS AND MANAGERS  
ASSOCIATION OF CHICAGO



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